FILED
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JOHN T. FEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 11

UNITED STATES GYPSUM COMPANY,
Appellant,

vs.

NATIONAL GYPSUM COMPANY, *et al.*,
Appellees.

MOTION FOR THE RE-TAXING OF COSTS.

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Appellee, National Gypsum Company (National), respectfully moves this Court to re-tax costs in the above action and to assess one-half of the costs against appellant, United States Gypsum Company (Gypsum). Costs should be re-taxed because, although this Court affirmed in part and reversed in part the judgment of the court below, costs of $7,020.80 have been taxed solely against appellees.

There were six issues before this Court on appeal. The first issue was whether the court below had jurisdiction to modify its 1951 Decree. The remaining five issues were whether the court below properly modified its decree to enjoin Gypsum from maintaining each of the five counts of its action in the Iowa Court, i.e., two counts based on the royalty provisions of the illegal contracts; two counts in *quantum meruit* and one count in infringement. The Court found that the enjoining of the latter three counts (*quantum*

meruit and infringement) was not justified upon the record and, as to these counts, remanded the cause to the court below for the taking of evidence. The Court affirmed the lower court's holding as to the other three issues: the holding that the court below had jurisdiction to modify its 1951 Decree, and the determination that Gypsum's first two counts (on the illegal contract) were barred by that decree.

This case, therefore, was a partial victory for Gypsum, and a partial victory for appellees; the judgment of the lower court was reversed only in part. Three important elements of that judgment still stand.

The importance of the affirmed elements of the lower court's holding is demonstrated by the great length of the arguments by all parties on these points in their briefs both in this Court and in the court below.* The Government's position before this Court and in the court below was confined exclusively to these points. Furthermore, the question of jurisdiction was separately designated by Gypsum as one of the questions on appeal (Jurisdictional Statement, p. 5).

In view of the fact that a substantial part of the judgment of the court below was affirmed, and in view of the demonstrated importance of the issues on which the judgment of the court below was affirmed, it is respectfully submitted that appellant Gypsum should be required to pay one-half the costs of the appeal.

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* Fully one-half of the Argument section of Gypsum's brief in the court below is devoted to a discussion of these issues (Gypsum Brief Below pp. 38-68, 86-99, 122-131), National and Certain-teed likewise argued these issues at length in their briefs below. (National Brief Below pp. 30-32, 68-81; National Reply Brief Below pp. 27-40; Certain-teed Brief Below, pp. 18-31; Certain-teed Reply Brief Below pp. 21-26). These points were again briefed at great length before this Court (Gypsum Brief pp. 20-21, 26-35, 62-74; Gypsum Reply Brief, 13-16; National Brief 23-24, 28-48; Certain-teed Brief, 24-25, 32-43.)

Conclusion.

For the reasons hereinbefore stated, the Court should amend that part of its mandate taxing costs of $7,020.80 against appellees and should re-tax costs as follows:

Appellant	
United States Gypsum Company	$3,510.40
Appellees	
National Gypsum Company Certain-teed Products Corporation	3,510.40
	$7,020.80

Respectfully submitted,

SAMUEL I. ROSENMAN,
ELMER E. FINCK,
Attorneys for National Gypsum Company.